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DATE: August 8, 2006

TO: Examiner HUYNH, Ba
USPTO GPAU 2179

FAX NO.: 571-273-0053

FROM: Jeffrey G. Toler
Reg. No.: 38,342

RE U.S. App. No.: 10/669,171, filed September 23, 2003

Applicant(s): Brian Gonsalves, et al.

Atty Dkt No.: 1033-SS00419

Title: SYSTEM AND METHOD FOR PROVIDING MANAGED POINT TO POINT SERVICES

NO. OF PAGES (including Cover Sheet): 7

MESSAGE:

Attached please find:

☒ Transmittal Form (1 pg)
☒ Reply Brief (5 pgs)

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Filing Date	September 23, 2003
First Named Inventor	Brian Gonsalves, et al.
Art Unit	2179
Examiner Name	HUYNH, Ba
Attorney Docket Number	1033-SS00419

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment/Reply
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  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawing(s)
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	TOLER SCHAFFER, LLP		
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s):	**Brian Gonsalves, et al.**		
Title:	**SYSTEM AND METHOD FOR PROVIDING MANAGED POINT TO POINT SERVICES**		
App. No.:	**10/669,171**	Filed:	**September 23, 2003**
Examiner:	**HUYNH, Ba**	Group Art Unit:	**2179**
Atty. Dkt. No.:	**1033-SS00419**	Confirmation No.:	**1042**

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REPLY BRIEF

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Appellant respectfully maintains that each of claims 16-24 are allowable over Swart. Broadly, Swart discloses a system that sends content from A to B. Swart does not disclose how to initialize, monitor, and monetize the network connections that actually connect A to B for the content transfer. Thus, Swart cannot render obvious a system and method for providing managed point-to-point services.

In response to the Examiner's Answer with regard to independent claim 16 (*see* Examiner's Answer, pp. 6-7), Swart teaches in paragraph 0066, lines 6-13, a user requesting content from a content acquisition server 400, and not a user requesting a connection to a video source. For example, paragraph 0060 of Swart teaches: "content download requests are routed to a content download request processor 302," and "the processor...routes content download requests to the content acquisition server 400." Again, a user of Swart requests content, not a connection.

The Examiner asserts that a user of Swart requests a connection by user selection from a list of content. See Examiner's Answer, p. 7, line 1. Appellant respectfully disagrees. Swart teaches a user may submit a content download request that is accompanied by "data indicating the source of the content, and whether the content is local or remote." *See* Swart, paragraph 0066. However, Swart does not treat this download request as a request for a connection, as the Examiner asserts. Instead, the selected content may be routed though a remote content download processor 402 of the content acquisition server 400, then through a coder and content formatter 252, then a content delivery server 450, and then a communication server 250. See Swart, paragraph 0067. The system of Swart may insert advertisements into the content, see Swart, paragraph 0069, encrypt the content to enforce a digital rights management (DRM) scheme, see Swart, paragraph 0070, and even store it to a local system memory, see Swart, paragraph 0078-0079, before sending the content to the requestor. Thus, even though the download request may identify a content source, it is simply not a request for a connection to the content source, it is a request for content.

Appellant further respectfully disagrees with the Examiner's interpretation of lines 16-17 of paragraph 0073 of Swart, "[s]earch criteria can also be entered based on the time of day, channel, and/or content provider," as the user requesting a connection by specifying a service

provider. See Examiner's Answer, p. 7, lines 3-6. In context, the cited passage simply indicates that in addition to searching for content based on program content, program type or format, and program subject categories, a user may also search for content based on time of day, channel, and content provider. See Swart, paragraph 0073. Searching for content based on time of day, channel, and/or content provider does not read on, nor does it render obvious, requesting a connection to a video content source operable to output an information stream, as recited in claims 16-24.

Appellant further respectfully disagrees with the Examiner's assertion that Swart discloses tracking a metric associated with communication of the information stream. See Examiner's Answer, p. 7, lines 8-9. Viewing statistics, date/time viewed, and usage rights and fees are all content-related, and not communication-related, metrics. For example, the metric "this show has been viewed 124 times" is not a metric associated with communication of an information stream from a video content source.

Appellant also respectfully disagrees with the Examiner's assertion that Swart teaches tracking available bandwidth as a metric and generating billing information based on the available bandwidth. See Examiner's Answer, p. 7, lines 8-17. Only paragraph 0088 mentions bandwidth: "[s]ince the HDTV format requires more digital data, it will also require more bandwidth to transmit, possibly increasing the cost of delivery. Therefore, the quality of the video delivered may be a variable in the fees charged to the users of the system" (emphasis added). Thus, Swart teaches charging more for HDTV content because it may cost more to deliver. Swart does not disclose tracking bandwidth during transmission of the content, nor does Swart disclose billing based on bandwidth during the transmission. In fact, Swart teaches away from billing based on connection metrics by aggregating increased communication costs into a "quality of content" charge, as opposed to a "quality of connection" charge.

As to each of claims 17-21 and 24 individually argued in the Appeal Brief, Appellant respectfully maintains that each is allowable, at least by virtue of their dependency from claim 16.

Appellant further respectfully submits that the Examiner fails to support a prima facie case of obviousness for each of claims 17-21. A prima facie case of obviousness must include a showing of proper motivation to make the proposed combination or modification. *See* MPEP § 2142. Appellant respectfully submits that the Examiner has failed to demonstrate sufficient motivation to make the proposed modifications.

For example, the Examiner takes Official Notice that the elements recited in claim 17 "would have been an obvious method of doing business." *See* Examiner's Answer, p. 4, lines 16-19. In addition, the Examiner takes Official Notice that the elements recited in claim 19 "would have been obvious." *See* Examiner's Answer, p. 8, lines 16-19. Appellant respectfully submits that a prima facie case of obviousness cannot be established by Official Notice. Instead, the Examiner must demonstrate knowledge in the art at the time of invention and proper motivation to make the proposed modification or combination.

Appellant notes that none of the references cited by the Examiner to support the Official Notice of claims 17 and 19 (U.S. Patent No. 6,813, 777, U.S. Patent No. 6,757,911, and U.S. Patent No. 5,956,024) teach or suggest receiving payment prior to initiating a point-to-point communication link, and that U.S. Pub. No. 2005/0157711 is not prior art. Appellant further notes that Swart also does not provide motivation for the proposed modification. Thus, the Examiner has not demonstrated proper motivation for the proposed modification of Swart.

As another example, Appellant respectfully submits that Swart fails to disclose or suggest at least one element of claim 19. For example, although Swart teaches the generation of a list of suggested content in response to a search request, Swart does not teach or suggest maintaining a list of available content sources, including the video content source, as recited in claim 19.

As yet another example, Appellant respectfully submits that Swart fails to disclose or suggest at least one element of claim 20. For example, none of the cited paragraphs disclose or suggest tracking and billing based on connection duration, as recited in claim 20. *See* Swart, paragraphs 0020, 0056, 0059, 0109, Examiner's Answer, p. 4, lines 13-14.

CONCLUSION

For at least the above reasons, all pending claims are allowable and a notice of allowance is courteously solicited. Please direct any questions or comments to the undersigned attorney at the address indicated. Appellant respectfully requests reconsideration and allowance of all claims and that this patent application be passed to issue.

Respectfully submitted,

8-8-2006
Date

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